

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MICHAEL J. AXTMAN, JAMES J.  
11 BENITEZ, DR. RONALD P. BENITEZ,  
12 ELIZABETH A. BENITEZ, ROBERT E.  
HARBISON and SUZANNE M.  
HARBISON,

13 Plaintiffs,

14 v.

15 KC DISTANCE LEARNING, INC., a  
16 Delaware corporation,  
17 Defendant.

No.

**NOTICE OF REMOVAL**

18 TO: MICHAEL J. AXTMAN, JAMES J. BENITEZ, DR. RONALD P. BENITEZ,  
19 ELIZABETH A. BENITEZ, ROBERT E. HARBISON and SUZANNE M.  
HARBISON, Plaintiffs.

20 AND TO: Michael A. Goldfarb, WSBA No. 13492, Anthony Todaro, WSBA No.  
21 30391, Peterson Young Putra, 1501 Fourth Avenue, Suite 2800, Seattle,  
WA 98101-1609, Attorneys for Plaintiff

22 AND TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
23 WESTERN DISTRICT OF WASHINGTON

24 Please take notice that pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, defendant KC  
25 Distance Learning, Inc. ("KCDL"), hereby removes this action from the King County Superior  
26

NOTICE OF REMOVAL - 1

1 Court of Washington to the United States District Court for the Western District of Washington,  
2 Seattle Division. This Notice of Removal demonstrates the following grounds for removal:

3 1. KCDL is a defendant in an action pending in the King County Superior Court of  
4 Washington entitled *Michael J. Axtman, James J. Benitez, Dr. Ronald P. Benitez, Elizabeth A.*  
5 *Benitez, Robert E. Harbison and Suzanne M. Harbison v. KC Distance Learning, Inc.*, Case No.  
6 10-2-21865-3 SEA (the "State Action").

7 2. Attached as Exhibit 1 to the Declaration of Timothy W. Snider ("Snider Decl."),  
8 filed herewith, is a copy of the Summons and Complaint served upon KCDL, which constitutes  
9 all of the process, pleadings and orders in the State Action to date.  
10

11 3. The State Action was commenced when the Summons and Complaint were  
12 served on KCDL on June 2, 2010. This Removal Notice is filed timely within 30 days after  
13 service of process under 28 U.S.C. § 1446(b).

14 4. Plaintiff Michael Axtman is a citizen of the state of Washington. Plaintiff James  
15 Benitez is a citizen of the state of Florida. Plaintiffs Ronald and Elizabeth Benitez are citizens of  
16 the state of New Jersey. Robert and Suzanne Harbison are citizens of Arizona. *See* Exhibit 2 to  
17 Snider Decl.

18 5. KCDL is incorporated in Delaware and has its principal place of business in  
19 Oregon.

20 6. In the Complaint, Plaintiffs seek to rescind an Asset Purchase Agreement (the  
21 "APA"), and, in the alternative, damages in an unstated amount. The cash consideration for the  
22 assets under the APA was \$2,340,000, excluding the value of two deferred payments and an  
23 assumption of liabilities by KCDL. *See* Exhibit 2 to Snider Decl. Consequently, the amount in  
24 controversy exceeds \$75,000.  
25  
26

7. This Court has original jurisdiction under 28 U.S.C. § 1332(a)(1) and (c)(1) because this is an action between citizens of different states and the amount in controversy exceeds \$75,000.

8. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the location in which the removed action was pending.

9. Counsel for KCDL certifies that they will promptly file a copy of this Notice of Removal with the Clerk of the King County Superior Court of Washington and give notice of the same to counsel for Plaintiffs, as required by 28 U.S.C. § 1446(d).

10. By filing this notice, KCDL does not waive, and expressly reserves, any defenses that may be available to it.

WHEREFORE, KCDL removes the above-captioned action now pending against it in the King County Superior Court of Washington to the United States District Court for the Western District of Washington, where it shall proceed as an action originally commenced there.

DATED: June 21, 2010.

STOEL RIVES LLP

*s/ Molly Daily*

Timothy W. Snider, WSBA No. 39808

Molly Daily, WSBA No. 28360

Stoel Rives LLP

600 University Street, Suite 3600

Seattle, WA 98101

Telephone: (206) 624-0900

Facsimile: (206) 386-7500

Email: [twasnider@stoel.com](mailto:twasnider@stoel.com)

Email: [mmdaily@stoel.com](mailto:mmdaily@stoel.com)

Attorney for Defendant KC Distance Learning,  
Inc.

NOTICE OF REMOVAL - 3

**CERTIFICATE OF SERVICE**


I, Debbie Dern, certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of eighteen years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 3600 One Union Square, 600 University Street, Seattle, Washington 98101.

On June 21, 2010, I caused a copy of the foregoing document to be served upon the following individual(s) in the manner indicated below:

Michael A. Goldfarb  
Anthony Todaro  
Peterson Young Putra  
1501 Fourth Avenue, Suite 2800  
Seattle, WA 98101-1609  
Telephone: (206) 624-6800  
Facsimile: (206) 682-1415  
Email: [goldfarb@pypfirm.com](mailto:goldfarb@pypfirm.com)  
Email: [todaro@pypfirm.com](mailto:todaro@pypfirm.com)

- ☐ hand delivery
- ☐ facsimile transmission
- ☐ overnight delivery
- ☒ first class mail
- ☒ e-mail delivery

Executed on June 21, 2010, at Seattle, Washington.

  
Debbie Dern, Legal Secretary